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Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 433.

STATE OF MINNESOTA, COMPLAINANT, APPELLANT,

vs.

THE NORTHERN SECURITIES COMPANY, THE NORTHERN PACIFIC RAILWAY COMPANY, THE GREAT NORTHERN RAILWAY COMPANY, AND JAMES J. HILL, AS PRESIDENT OF THE NORTHERN SECURITIES COMPANY AND INDIVIDUALLY, DEFENDANTS, APPELLEES.

COMPLAINANT'S POINTS IN REPLY ON MOTION TO ADVANCE.

A motion to advance is granted for special and peculiar reasons shown. The facts and circumstances of the case control, not the conclusions drawn by counsel.

Reasons for advancing this case are set forth in the points heretofore filed in support of the motion.

As to the extent of the duplication of the voluminous records of these two cases we respectfully invite an inspection thereof by the court.

Sufficient reasons for advancing the case have, we believe, been shown.

In Haye *vs.* R. R. Co., 93 U. S., 2, the court stated the reason for advancing the Illinois tax cases as follows:

"The question was as to the constitutionality of the law under which all the property of railroad corporations in that State was taxed. The courts of the State had decided in favor of the validity of the law and the circuit court of the United States against it. They are class cases and their determination would dispose of many other suits of the same character then pending in the circuit court, in which interlocutory injunctions had been allowed. In addition to this it was shown that the action of the circuit court in granting such injunctions practically suspended not only the enforcement of the revenue laws of Illinois against railroad corporations, but the collection of the taxes assessed upon the capital stock and franchises of all other corporations in the State except so far as such corporations voluntarily pay such taxes. Under such circumstances it is easy to see that questions of great public interests were involved and that the operations of the government of the State would be embarrassed so long as they remain undetermined by this court. Sufficient reason was shown and the causes were accordingly advanced."

Corresponding reasons may be urged that pending a decision on the merits of this cause, Minnesota as a sovereign State will be embarrassed in its governmental operations, since enforcement of the laws involved will be practically suspended. The State legislature in passing these laws has determined conclusively that the interests of all the people of the State demanded their enactment and enforcement.

Replying to one certain suggestion made in opposition to the motion, we submit that if the Federal case should be decided in favor of the Government, the State case should also be heard and determined, so that the State may know its rights under its present laws in the event that other railroads within the State should attempt to consolidate or acquire control of parallel or competing lines within the State, and also in order that the State may know its rights and prevent any control of these railroads, which if not in viola-

tion of the National Anti-trust act might be in violation of either one or both of the State acts.

Counsel suggest on page 3 of their objections "that it is not material to inquire on what grounds the circuit court took jurisdiction." We concede that it is not material on this motion to advance, and hence maintain that all suggestions on the subject of jurisdiction are immaterial and should be wholly disregarded at this time.

It is sufficient upon this preliminary motion that the circuit court maintained jurisdiction and no argument should be considered when neither a full discussion would be possible nor under the rules would one be entertained; while to determine what the circuit court did or did not decide would necessitate a consideration of the entire subject matter of the controversy.

We suggest that if counsel will be prepared to present the jurisdictional feature as soon as the rules permit, they will be equally well prepared to discuss the merits December 15, or as soon thereafter as the court may determine.

Elaborate and exhaustive arguments were prepared and made in the court below by both sides and a discussion of the matter of jurisdiction in this case will entail a discussion of practically all points necessary to a determination of the merits.

We strongly contend that any argument touching the jurisdiction is inadmissible, except after due notice, and so certainly inadmissible on this motion, yet, since reference has been made to it as an alleged ground for denying the motion, we reply with a few counter-suggestions, which in turn are material here only so far as these jurisdictional suggestions of counsel are material.

Appellant seeks to enforce article 4 of the Constitution of the United States and its rights thereunder; to avail itself of the National Anti-trust act; it claims that original jurisdiction exists in the Federal courts to hear and determine

this cause; while defendants themselves claim that an enforcement of the laws of Minnesota invade rights guaranteed to them under the Federal Constitution.

By the terms of the Judiciary act, page nine hundred and three, volume one, of Supplement I, appeal lies directly to the Supreme Court "in any case that involves the construction or application of the Constitution of the United States," or "in any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States." Complainant, in paragraph 11 of its complaint, after charging the acts of the defendants, alleges that if said Northern Securities Co. is allowed to hold and control the stocks of said railway companies, and to carry out the purpose and object of its incorporators as well as its own, full faith and credit will not be given to the public acts of this complainant, and it will be deprived of a further right guaranteed to it by the Constitution of the United States.

Each of the defendants in paragraph seven, pages sixty-four, seventy-two, and eighty-two of Record, of their various answers, in referring to the statutes of Minnesota which complainant pleaded in its bill of complaint, alleges that "these statutes are in violation of the Constitution of the United States."

Thus it appears that both the complainant and all the defendants asserted rights dependent upon the true construction of and guaranteed by the Constitution of the United States. Each of these questions was argued by counsel for the respective parties to the trial court, and while the court in its decision may not have placed the same upon the respective grounds urged by counsel, or may have entirely ignored the questions, still it is insisted that constitutional questions were not only presented, but that this controversy, from the standpoint of all parties, will of necessity again involve them when the facts are found in accordance with the evidence, and the statutes of Minnesota

are correctly construed, and that these questions are necessarily involved in the appeal.

Again, the defendants removed the cause from the district court of Ramsey county, Minnesota, to the circuit court of the United States upon the ground that "this action arises under the Constitution and laws of the United States, and more especially under the eighth section of the first article of the Constitution and the fourteenth amendment thereto and the act of Congress entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and that the title and right on which the said action depends and is based and on which a recovery for the plaintiff depends will be defeated by one construction of the Constitution or said law, and sustained by an opposite construction" (Record, page 47).

Diverse citizenship did not enter into the removal; therefore, under the rule adopted in Union and Planters' Bank *vs.* Memphis, 189 U. S., 71, an appeal lies directly to this court.

Defendants having removed to the Federal court on ground that constitutional questions are involved, they are now estopped from denying it.

Crowley *vs.* Northern Pacific, 159 U. S., 583.
Mastin *vs.* Railway Company, 123 Federal, 827.

The State desires to be heard orally on any motion to dismiss appeal, and this is an additional reason why the cause should be advanced, so that such argument may be had at the hearing on the merits, as provided in rule 6.

Again, the record, not the assignments of error, must be consulted as indicating all the questions involved in the litigation. The assignments barely point out those errors claimed to have been committed which tell against the appellant.

We submit that an *intention* to move to dismiss is not sufficient to defeat this motion to advance. We suggest that it will be of very great assistance to the court and counsel and of much benefit to the people of Minnesota and of the entire country if these two cases are heard within a short time of each other. We reply that the appeal ought not to be dismissed, if motion be made to that end; that a consideration of the jurisdictional feature in advance will necessitate a subsequent hearing of the merits, and it is the hearing on the merits for which we seek an early opportunity, while the exhaustive discussion of the Federal case will be fresh in the minds of the court and of counsel.

Respectfully submitted.

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Solicitor for Appellant.

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